

MAR 03 2017

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

UNITED STATES OF AMERICA

Case No. 7:04-cr-00072-1

v.

MEMORANDUM OPINION

RICHARD LAMONT LIGHTY,
Petitioner.

By: Hon. Michael F. Urbanski
United States District Judge

Richard Lamont Lighty pleaded guilty to federal drug and gun crimes, and the Presentence Report had attributed zero points to his sentencing guideline calculations for acceptance of responsibility. Petitioner's counsel at the time objected to the zero points because Petitioner had pleaded guilty. The court overruled the objection and sentenced Petitioner to 720 months' incarceration.

Presently before the court is Petitioner's pro se letter in which he insists that he should have received acceptance of responsibility points because he had pleaded guilty. The court construes the letter as a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 because Petitioner challenges the legality of the imposed sentence. Court records indicate that the court already dismissed (Dkt. No. 619) a prior § 2255 motion (Dkt. No. 615) by which Petitioner could have raised the instant challenge. Thus, the construed § 2255 motion is a second or subsequent motion under 28 U.S.C. § 2255(h). See, e.g., United States v. Hairston, 754 F.3d 258, 262 (4th Cir. 2014).

The court may consider a second or successive § 2255 motion only upon specific certification from the United States Court of Appeals for the Fourth Circuit that a claim in the motion meets certain criteria. See 28 U.S.C. § 2255(h). As Petitioner has not submitted any evidence of having obtained that certification, the court dismisses the construed § 2255 motion without prejudice as successive. Based upon the court's finding that Petitioner has not made the

requisite substantial showing of denial of a constitutional right as required by 28 U.S.C. § 2253(c) and Slack v. McDaniel, 529 U.S. 473, 484 (2000), a certificate of appealability is denied.

ENTER: This 2nd day of March, 2017.

1st Michael F. Urbanski

United States District Judge